

**SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

JOE COMES and RILEY PAINT, INC., an  
Iowa corporation,

Plaintiffs,

v.

MICROSOFT CORPORATION, a  
Washington Corporation,

Defendant.

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No. CV 05-562

**PLAINTIFFS' MOTION FOR  
EXPEDITED RELIEF ON  
MOTION TO REMAND**

**ORAL ARGUMENT  
REQUESTED**

Plaintiffs Joe Comes and Riley Paint ("Plaintiffs"), on behalf of themselves and the two certified classes they represent, have moved this Court pursuant to 28 U.S.C. § 1447 for an Order remanding this case to the District Court for Polk County, Iowa and states to the court:

1. In their remand pleadings, Plaintiffs have established that the removal of this case by Microsoft was blatantly improper, as it is abundantly clear that federal jurisdiction does not exist.
2. The Plaintiffs will sustain substantial and irreparable harm if the consequences of this improper removal are not immediately remedied by remanding this litigation to the Iowa District Court.
3. Microsoft has failed to advise this Court that it filed an interlocutory appeal with the Iowa Supreme Court seeking review of a collateral estoppel ruling by the Iowa District Court.
4. Microsoft has failed to advise this Court that the Iowa Supreme Court specially set an expedited hearing for the week of December 5, 2005 to hear oral argument on that

key issue. The hearing was expedited to allow the parties to stay on their pre-trial schedule with trial set to commence September 18, 2006.

5. Given the obvious importance of that Microsoft appeal, and the need for a prompt and final resolution regarding collateral estoppel, it is imperative that this case be remanded back to Iowa state court at the earliest possible time so as to preserve the December 2005 oral argument. If that is delayed, the September 18, 2006 trial date will be adversely affected. If that date is lost, and if the current pretrial schedule and trial date are not maintained, Plaintiffs will be substantially and irreparably harmed. This Court should not permit that to happen.
6. Therefore, if this Court does not *sua sponte* remand this action Plaintiffs respectfully request that an order be entered for expedited briefing, hearing and decision on their motion to remand.
7. Plaintiffs are filing their motion to remand today, Tuesday, October 18, 2005. Plaintiffs request that Microsoft be ordered to file its opposition on or before Friday, October 21, 2005, after which Plaintiffs will file their reply in support of their motion to remand on or before Monday, October 24, 2005. Plaintiffs suggest that oral argument be heard on or before Friday, October 28, 2005. Plaintiffs suggest that a telephonic hearing be held if out-of-state counsel have calendar difficulties.

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ATTORNEYS FOR PLAINTIFFS

I hereby certify that on October 18, 2005, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of said filing to all CM/ECF participants.

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